IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

VILMA BOUCHARD, EXECUTRIX OF THE
ESTATE OF SAMANTHA A. BOUCHARD,

          PLAINTIFF,   04CV1798

    V.   ELECTRONICALLY FILED

CSX TRANSPORTATION, INC.,

          DEFENDANT.

Memorandum Order

Pending before this Court is defendant's motion for judgment as a matter of law pursuant to Fed. R. Civ. P. 50 (doc. no. 211), and plaintiff's response thereto (doc. no. 212). To the extent defendant seeks judgment as a matter of law on plaintiff's negligence claims (regarding the sounding of the horn, the absence of gates at the Juniper Street crossing, and the adequacy of training of Mr. Taylor), said motion is DENIED.

Additionally, in its motion and attached as Exhibit A, defendant also seeks judgment as a matter of law on plaintiff's claim for punitive damages. Defendant correctly emphasizes that under Pennsylvania law, punitive damages may not be awarded based upon a showing of mere negligence, or even gross negligence. *Phillips v. Cricket Lighters*, 883 A.2d 439, 445 (Pa. 2005). Rather, punitive damages may be awarded only when the plaintiff has demonstrated that "the defendant's actions are so outrageous as to demonstrate willful, wanton or reckless conduct." *Hutchinson v. Luddy*, 870 A.2d 766, 770 (Pa. 2005). After having considered all of the evidence, this Court finds that the actions and/or inactions of defendant and its agents does not rise to the level of willful, wanton or reckless conduct as a matter of law. Rather, defendant's actions and/or inactions amounted to nothing more than negligence. Therefore, this Court will GRANT

defendant's motion for judgment as a matter of law on the issue of presentation of punitive

damages.

Accordingly, for the reasons set forth hereinabove, defendant's motion for judgment as a

matter of law is GRANTED as to plaintiff's claim for punitive damages, and in all other respects

is DENIED.

SO ORDERED this 14th day of September, 2006.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge